

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 94-149-W - ORDER NO. 95-1529 ✓  
SEPTEMBER 21, 1995

IN RE: Application of Carolina Water Service, Inc.	)	ORDER
for Approval of a Water Supply Agreement	)	APPROVING
with Lexington County Joint Municipal	)	STIPULATION
Water and Sewer Commission.	)	AND
	)	AGREEMENT

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Carolina Water Service, Inc. (CWS or the Company) for approval of a Bulk Water Sales Agreement between CWS and the Lexington County Joint Municipal Water and Sewer Commission (the Agreement). The Application was filed pursuant to Commission Order No. 93-402 (May 11, 1993) issued in Docket No. 91-641-W/S wherein the Commission stated that "all contracts between CWS and bulk water suppliers must be filed with the Commission for its approval." Order No. 93-402, p. 44.

The Agreement (attached hereto as Attachment 1) was originally filed with the Commission on March 1, 1994. The Company was thereafter instructed to publish a prepared Notice of Filing in newspapers of general circulation in the area affected by the Agreement and to provide a copy of the Notice of Filing to the customers affected by the Agreement. The Company submitted an

Affidavit of Publication and Certificate of Service to show compliance with the instructions to provide notice of the Agreement. No Protests or Petitions to Intervene were received by the Commission. The Commission scheduled a night hearing to receive customer comments regarding the Agreement. After the night hearing, the Commission set this matter for an evidentiary hearing. Subsequently, CWS wrote a letter withdrawing the Application for approval of the Agreement. On October 31, 1994, the Commission issued Order No. 94-1144 in which the Commission cancelled the hearing scheduled in this Docket and instructed the Commission Staff to work with and assist CWS and the Homeowners Association in the Silvercreek and Rollingwood Subdivisions in reaching a solution to the water problems in that area.

The Commission Staff, through the efforts of Dr. R. Glenn Rhyne, began communications and negotiations with CWS and the President of the Silvercreek Homeowners Association. After lengthy negotiations, a Stipulation was executed on or about July 10, 1995, by CWS and the President of the Silvercreek Homeowners Association (the Stipulation) (attached hereto as Attachment 2). The Commission instructed CWS to provide notice of the Stipulation to the customers in the Rollingwood and Silvercreek Subdivisions. After notice of the Stipulation, no Protests or Petitions to Intervene were received by the Commission regarding the Stipulation.

The Commission has reviewed the Stipulation of CWS and the Silvercreek Homeowners Association and has reviewed the original

Agreement. After reviewing these documents, the Commission finds that it is in the public interest that the Stipulation and the Agreement be approved. Under the Stipulation, CWS will install fire hydrants in the Rollingwood and Silvercreek Subdivisions. CWS also agrees that the rates for bulk water will not change for one (1) year from the date of implementation of the contract and further that future contracts between CWS and the Lexington County Joint Municipal Water and Sewer Commission should be based on the lowest available rate for any private system bulk rate charge. The Commission also notes that the customers in the area affected by the Agreement and the Stipulation were provided ample opportunity to be heard in this matter and that no customer opposition to approval of the Agreement and Stipulation was received by the Commission.

IT IS THEREFORE ORDERED THAT:

1. The July 10, 1995, Stipulation between CWS and the Silvercreek Homeowners Association (Attachment 2) and the December 7, 1993, Agreement between CWS and the Lexington County Joint Municipal Water and Sewer Commission (Attachment 1) are hereby approved. Appendix A, attached hereto and incorporated herein by reference, depicts the new rates for Silvercreek and Rollingwood Subdivisions that result from approval of the Agreement and the Stipulation.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)

APPENDIX A

CAROLINA WATER SERVICE, INC.

FILED PURSUANT TO DOCKET NO. 94-149-W - ORDER NO. 95-1529  
EFFECTIVE DATE: SEPTEMBER 21, 1995

SCHEDULE OF RATES AND CHARGES FOR  
ROLLINGWOOD AND SILVERCREEK SUBDIVISIONS

Residential Water

Monthly Base Facilities  
Charge for Distribution

\$8.00 per unit

Commodity Charge:

Distribution

\$1.85 per 1,000  
gallons or 134 cft

Plus

Wholesale Cost  
(not to change for one year  
from the date of the  
implementation of the contract)

\$1.90 per 1,000  
gallons or 134 cft

**WATER SUPPLY AGREEMENT**  
**Carolina Water Service, Inc. and Lexington County Joint**  
**Municipal Water and Sewer Commission**

1        THIS AGREEMENT, made and entered into on  
2        this 7<sup>th</sup> day of December, 1993, by and between  
3        Carolina Water Service, Inc., a Delaware corporation,  
4        (hereinafter referred to as "Utility") and Lexington County  
5        Joint Municipal Water and Sewer Commission, a tax exempt  
6        water and sewer authority licensed by the State of South  
7        Carolina. (hereinafter referred to as "Commission").

**WITNESSETH**

9        WHEREAS, Utility is engaged in the business of  
10        furnishing water service to the public in an area located in  
11        Lexington County, South Carolina, known as Silver Creek(I &  
12        II)/Rollingwood subdivisions (hereinafter referred to as the  
13        "Water Service Area" and more fully described on the map  
14        attached hereto as Exhibit 1); and

15        WHEREAS, the Commission has allowed Utility to  
16        interconnect Utility's Water Service Area water mains with  
17        the Commission's water distribution system so as to provide  
18        emergency water service to the Water Service Area; and

19        WHEREAS, the Utility desires to obtain, and the  
20        Commission desires to provide total water supply service for  
21        the Utility's existing and future customers within the Water

1 Service Area, subject to the terms and conditions of this  
2 Agreement.

3 NOW, THEREFORE, in consideration of the premises which  
4 shall be deemed an integral part of this Agreement and of the  
5 mutual covenants as hereinafter set forth the parties hereto  
6 agree as follows:

7 Section 1

8 Purpose

9 It is the purpose and intent of this Agreement to  
10 provide for public water service by Utility, utilizing the  
11 Commission's water supply, to existing and future homes and  
12 structures within the Water Service Area defined in Exhibit  
13 1, and to provide for the timely payment to the Commission by  
14 Utility of all costs incurred in the provision of water to  
15 Utility by the Commission. All terms and conditions  
16 contained herein shall be read and interpreted in a manner  
17 consistent with and in furtherance of this purpose and  
18 intent.

19 Section 2

20 Water Supply Service

21 1. The Commission shall provide water supply service  
22 to Utility under terms and conditions contained in this  
23 Agreement. Such service shall be provided through Commission  
24 water mains and one or more interconnections with Utility's  
25 water distribution system in the Water Service Area. On an  
26 emergency basis, Utility has installed, at its expense, a  
27 meter vault, meter and backflow preventer and interconnected

1 the Commission's mains with the Utility's water mains  
2 utilizing a 2 inch connecting water main to meet peak demand  
3 only. Utility has installed a second interconnection  
4 utilizing a 6 inch connecting main at a second location.  
5 Such second interconnection will be used to provide all of  
6 the water supply required to supply Water Service Area with  
7 potable water, commencing on the date of this Agreement. The  
8 second interconnect has been installed at Utility's cost and  
9 expense and includes an appropriate meter, meter box and  
10 backflow preventer. The meter, meter box, and backflow  
11 preventer so installed at both locations will become the  
12 property of Commission as of the date of this Agreement, and  
13 Commission will maintain and replace such equipment after the  
14 transfer date. All Commission and Utility construction work  
15 shall meet all applicable regulatory standards. The  
16 Commission will deliver water to Utility with adequate  
17 pressure and quantity to serve existing and future Utility  
18 customers in Water Service Area, subject to any limitations  
19 provided for herein.

20 2. The Commission shall use its best efforts to  
21 provide the necessary water supply capacity needed by Utility  
22 to service its customers within the Water Service Area.  
23 Notwithstanding any other provisions contained herein, the  
24 Commission shall not be liable for any damages as the result  
25 of the inability or failure to provide water services  
26 pursuant to this Agreement either on a temporary, emergency,  
27 or permanent basis. Further, the Commission will be obligated



1 to provide to Utility water which meets or exceeds all state  
2 and federal regulatory requirements, in accordance with  
3 provisions of this Agreement.

4 3. Utility and Commission agree that the following  
5 method for billing Utility for water sold to Utility by  
6 Commission ("The Billing Method") is acceptable to both  
7 parties.

8 **The Billing Method:** Utility shall make an  
9 initial advance payment to Commission for one month's usage,  
10 as determined by the average monthly usage within the Water  
11 Service Area for the most recent twelve month period, and  
12 thereafter shall make bi-monthly payments to Commission based  
13 on the water usage registered on all Utility customers'  
14 meters within the Water Service Area. The Commission's  
15 initial charge to Utility for the water so metered will be  
16 equal to the lowest Commission wholesale water rate  
17 authorized by the Commission for similarly situated private  
18 water company customers, where the wholesale water rate is  
19 computed by Commission identically as calculated for Utility.  
20 Such service rendered by the Commission is where billing is  
21 based upon retail customer meter readings and where Utility  
22 has paid all costs associated with interconnecting Utility  
23 water system with Commission water distribution system. Non-  
24 account water usage will be taken into consideration by  
25 Commission when setting rates for Commission customers. The  
26 Commission will establish an initial Water Supply Charge for  
27 the Water Service Area in the amount of \$2.06 per thousand

1 gallons of water, as registered on Utility customer's meters  
2 in the Water Service Area. The initial Commission Charge to  
3 Utility will include, by design, the cost of all water  
4 provided to Utility through the Commission master meter. Such  
5 charge shall be subject to adjustment at the end of each  
6 twelve (12) month period based upon gallonage of water  
7 supplied to Utility and Commission expenses and investment.

8 4. In the event that payment is not made to Commission  
9 by Utility within 15 days after each bi-monthly Utility  
10 customer billing, Utility agrees to pay interest to the  
11 Commission at the rate of one and one-half percent (1 1/2%)  
12 per month on the outstanding delinquent amount to the  
13 Commission after such 15 day period until said delinquent  
14 balance is paid in full.

15 5. It is agreed that the initial Commission Water  
16 Supply Charge will remain in effect for a period of twelve  
17 months from the date service is initiated. After the initial  
18 twelve month period, Commission may adjust the Water Supply  
19 Charge by appropriate action of the Commission.

20 6. The Commission agrees that there will be no Commission  
21 connection or tap fee of any kind assessed to Utility or its  
22 customers for taking service from Utility the day Commission  
23 water service is initiated. The Commission also agrees that  
24 all lots within the Water Service Area will be allowed to  
25 receive service without having to pay a Commission  
26 connection/tap fee.

Section 3

Public Service Commission Authorizations

1. The parties acknowledge that this Agreement and the right to place the Commission's Water Supply Charge on Utility's customer bills must be approved by the South Carolina Public Service Commission (the "PSC"). The PSC must also approve the Water Distribution Charge requested by Utility in the current rate increase application. The PSC may require that the customers be notified of the Agreement, the Utility Water Distribution Charge, and Commission Supply Charge to be implemented. The customers have the right to request a Commission hearing to examine the terms of this Agreement and approve the costs associated with the provision of Commission water to customers of the Utility. The PSC will decide after receiving Utility customer input if a public hearing is warranted. If no PSC hearing is deemed necessary by the PSC as substantiated by public input, the PSC will then issue a PSC Order without hearing either approving or denying the Utility's request. If a PSC hearing is held as a result of such public input, the PSC will issue a PSC order following such hearing either approving or denying the terms and conditions contained within this Agreement.

2. It is understood and agreed by both parties to this Agreement that should the PSC fail to approve the items contained herein-above, this Agreement may be immediately terminated by Utility and then neither party shall have any

1 further obligation hereunder. Should this occur, Utility will  
2 disconnect the interconnections between Utility's and  
3 Commission's mains and Utility will reclaim ownership of  
4 master meters and related facilities.

5 Section 4

6 Exclusive Supply Commitment and Exclusive Water  
7 Service Commitment

8 During the term of this Agreement, as long as Commission  
9 is able to meet Utility's water needs, Utility agrees to not  
10 utilize alternative water supply sources, including the  
11 Utility's existing water supply facilities, in order to  
12 service its customers within the Water Service Area. However,  
13 Utility will retain its existing supply facilities as an  
14 emergency back-up to be used in the event that the Commission  
15 cannot provide the necessary and sufficient water supply  
16 capacity to meet the service demand requirements of the Water  
17 Service Area. The Commission agrees not to provide water  
18 supply or service to any other entity or industry within the  
19 Utility approved Water Service Area defined herein.

20 Section 5

21 General Provisions

22 1. This Agreement shall be executed in two  
23 counterparts, each of which will be considered an original.  
24 This Agreement is binding upon the successors and assignees  
25 of the parties hereto. The provisions of this Agreement  
26 constitute the entire terms and provisions of this Agreement  
27 between the parties hereto, and no amendment or alteration

1 shall be binding unless the party affected thereby shall have  
2 executed a written instrument amending the Agreement.  
3 Whenever one party gives notice to the other party concerning  
4 any of the provisions of this Agreement, such notice shall be  
5 given by certified mail, return receipt required. Said notice  
6 shall be deemed given when it is deposited in the United  
7 States mail with sufficient postage prepaid (notwithstanding  
8 that the return receipt is not subsequently received).  
9 Notices shall be addressed as follows:

10 LEXINGTON COUNTY JOINT MUNICIPAL WATER AND SEWER COMMISSION

11 P. O. BOX 1966

12 Lexington, S.C. 29071

13 Attn: William C. Bull

14 General Manager

15 CAROLINA WATER SERVICE, INC.

16 2335 Sanders Road

17 Northbrook, Il. 60062

18 Attn: Perry B. Owens,

19 Chairman & C.E.O.

20 These addresses may be changed by giving notice as  
21 provided for in this paragraph.

22 2. No waiver of breach of any of the terms of this  
23 Agreement shall be construed to be a waiver of any succeeding  
24 breach.

25 3. Utility hereby indemnifies Commission from any  
26 liability arising out of the distribution and sale of the

1 Commission supplied water through Utility's mains throughout  
2 the Water Service Area, provided that Commission furnishes  
3 potable water to the Utility at the master meter location(s),  
4 which meets all regulatory standards, subject to limitations  
5 herein.

6 Section 6

7 Default

8 If either party materially fails or defaults in keeping,  
9 performing, or abiding by the terms and provisions of this  
10 Agreement, then the non-defaulting party shall give written  
11 notice to the defaulting party specifying the nature of the  
12 default. If the defaulting party does not cure the default  
13 within thirty (30) days after the date of written notice,  
14 then this Agreement, at the option of the non-defaulting  
15 party, shall terminate. Neither party shall be relieved of  
16 liability to the other for damages sustained by virtue of any  
17 party wrongfully exercising this provision. This paragraph is  
18 not intended to replace any other legal or equitable remedies  
19 available to any non-defaulting party under South Carolina  
20 law, but it is in addition thereto. Notwithstanding the  
21 foregoing, any failure to make timely payments shall be  
22 considered a material default under the terms of this  
23 Agreement without the necessity for any written notice to  
24 Utility.

25 Section 7

26 Term

1           This Agreement shall have a term of ten (10) years  
2   commencing on the date of execution of this Agreement. This  
3   Agreement shall not be considered an obligation on the part  
4   of the Commission to perform in any way other than as  
5   indicated in this Agreement. The Commission shall not be  
6   obligated under the terms of this Agreement to supply  
7   additional water for Utility to areas outside the Water  
8   Service Area, unless the Commission issues written  
9   notification that it does not object to such additional  
10  service, along with any conditions of such service.

## Section 8

Force Majeure

1. If, by reason of force majeure, either party hereto shall be rendered unable, in whole or in part, to carry out its obligations under this Agreement, then, and in that event, said party shall give notice in writing, to the other party, within a reasonable time thereafter, giving the full particulars of such force majeure.

19           The obligations of the party so affected shall thereupon  
20   be suspended and such suspension shall continue during the  
21   period in which such inability continues; provided, however,  
22   that the disabled party shall endeavor with all reasonable  
23   dispatch, to remove or overcome such inability. Provided  
24   further, however, that this Section 8 shall not apply to  
25   failures by Commission or Utility to make payments or credits  
26   for services rendered as specified under Section 2 entitled

1 "Water Supply Service."

2 2. The term "force majeure" as employed herein shall  
3 mean acts of God, strikes, lockouts or other industrial  
4 disturbances, acts of the public enemy, orders of PSC and  
5 courts of this State, orders of any kind of the government of  
6 the United States or the State of South Carolina, or any  
7 military authority, insurrection, riots, epidemics,  
8 landslides, earthquakes, fires, storms, hurricanes, floods,  
9 wash-outs, droughts, arrests and restraints of government and  
10 people, civil disturbances, explosions, breakage or damage to  
11 machinery, canals, tunnels, or pipelines, partial or entire  
12 failure of water system, improper operation or failure of the  
13 City of West Columbia Water Treatment Facility(ies), which  
14 results in delivery of substandard water quality or pressure  
15 to the Commission system, or the inability of Commission to  
16 furnish water hereunder or Utility to receive water hereunder  
17 for any reason or cause not reasonably within the control of  
18 the party claiming such inability.

19 Section 9

20 Miscellaneous Provisions

21 1. The parties hereto agree that from and after the  
22 date of execution hereof, each will, upon the request of the  
23 other, execute and deliver such other documents and  
24 instruments and take other actions as may be reasonably  
25 required to carry out the intent of this Agreement.

26 2. This Agreement shall be binding upon the heirs,  
27 representatives and assigns of the parties hereto and the



1 provisions hereof shall constitute covenants running with the  
2 land for the benefit of the heirs, representatives and  
3 assigns of the party.

4 IN WITNESS WHEREOF, the parties hereto have hereunto set  
5 their hands and seals the date first above written.

6

7 LEXINGTON COUNTY JOINT MUNICIPAL WATER AND SEWER COMMISSION

8

By William C. Bull  
GENERAL MANAGER

9

Attest: Rene Loderbock

10

Attest: Andy Kaper

11

12 CAROLINA WATER SERVICE, INC.

13

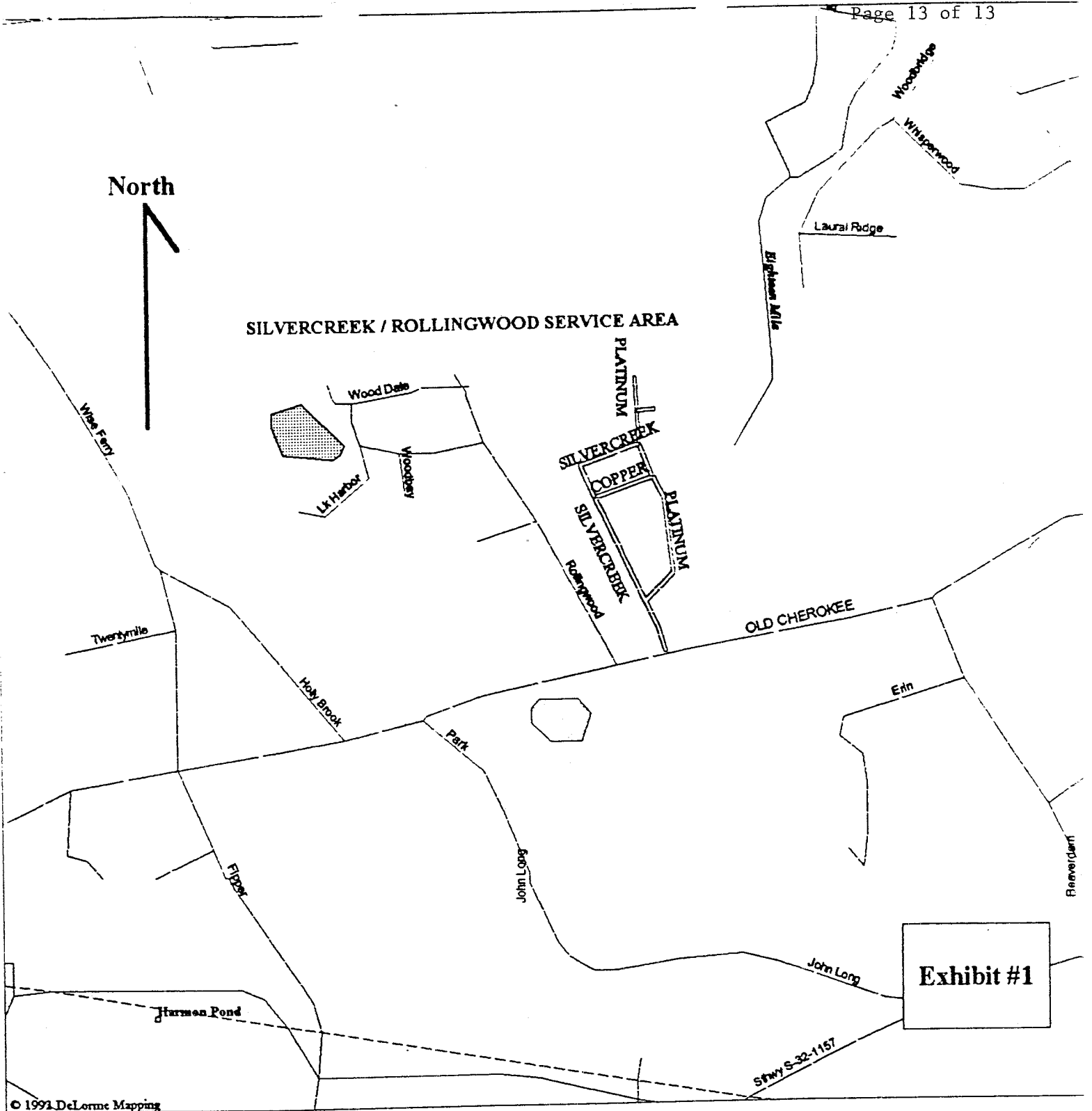
By David H. Thomas, V.P.

14

Attest: Joyce Guidice

15

Attest: Stephen Kennedy



© 1993 DeLorme Mapping

LEGEND

- Marker
- Road
- == U.S. highway
- River
- - - Powerline
- Shoreline
- Open water

Scale 1:15,625 (at center)

1000 Feet

500 Meters

Silvercreek / Rollingwood  
Mag 15.00  
Mon Aug 30 12:21:03 1993

AGREEMENT BETWEEN CAROLINA WATER SERVICE, INC.

AND THE SILVER CREEK HOMEOWNERS ASSOCIATION

June 30, 1995

The Homeowner's Association of Silver Creek subdivision and Carolina Water Service, Inc., agree to the following:

- A. Current rates and charges by Carolina Water Service (CWS, Inc.) for Silver Creek and Rollingwood subdivisions:

CWS, Inc.	Distribution charge	\$1.85	per 1,000 gallons usage
LWSC*	Bulk water charge	1.90	" " " "
	Total Usage Charge	\$3.75	" " " "

(With a Basic Monthly Charge per Customer of \$8.00)

\*LWSC is the Lexington County Joint Municipal Water and Sewer Commission.

- B. CWS, Inc. must seek and obtain approval from DHEC and install standard permanent fire hydrants for both Silver Creek and Rollingwood which are intended to provide sufficient fire protection flow as a result of, and as long as, the bulk water agreement exists with LWSC. The fire hydrants should be installed to meet existing applicable standards and specifications for fire protection.
- C. CWS, Inc., as expeditiously as possible, will take the steps necessary to seek approval of the bulk water agreement with LWSC and also from DHEC for the installation of fire hydrants.
- D. CWS, Inc. agrees that there will be no blending of the water provided by LWSC with any well water, except for emergency situations.
- E. CWS, Inc. agrees that rates for bulk water will not change for one year from the date of the implementation of the contract which is consistent with the original contract between LWSC and CWS, Inc. The agreement entered into between CWS and LWSC states that the LWSC will provide water for Rollingwood and Silver Creek subdivisions on a private system-bulk water rate basis at the lowest available rate for any private system bulk rate customers.

Future contracts between CWS, Inc. and LWSC to supply bulk water to the Silver Creek/Rollingwood Subdivisions should be based on the lowest available rate for any private system bulk rate charge.

The rate which CWS, Inc. can charge the residents of Silver Creek and Rollingwood in future bulk water agreements should be consistent with the lowest available rate concept as discussed above and within the contract and will be set forth as follows in future contracts:

1. The bulk water charge by LWSC to CWS, Inc. will be stated in the contract, exclusive of any unaccounted-for water. For example, under the current proposed contract that rate is \$1.85 per 1,000 gallons.
  2. Any additional charge for unaccounted-for water of 7.0% or less. Under this contract, the rate shown of \$2.06 per 1,000 gallons includes a 7.0% allowance for unaccounted-for water. The proposed bulk water rate within this stipulation of \$1.90 per thousand gallons allows for unaccounted-for water of less than 7.0% or 5 cents per 1,000 gallons.
- F. CWS, Inc., in addition to the bulk water rates listed above in item A, will pass through to its customers only those specific DHEC charges which are charged to them and which are required by that State agency and such charges will be based on the minimum level of monitoring permissible by DHEC and the State of South Carolina.
- G. CWS, Inc. agrees that should it be necessary for any reason to terminate the proposed bulk water agreement with LWSC, as set forth in the contract and as modified within this stipulation, the proposed substitute plan for water service will be brought to the Commission for consideration.
- H. This Stipulation between CWS, Inc. and the HOA of Silver Creek subdivision does not restrict the rights of either party to appear before the PSC regarding any aspects of the bulk water agreement.

WITNESS our signature below:

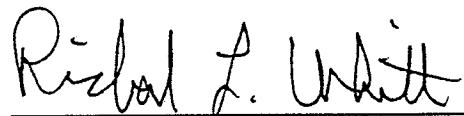
7-7-95  
Date of Signature

7-10-95

David A. Wilson  
Representative,  
Silver Creek Homeowners Assoc.

Steve Steve

WITNESS our signature below:

A handwritten signature in black ink, reading "Richard L. Whitte". The signature is written in a cursive style with a horizontal line underneath it.

Representative,  
Carolina Water Service, Inc.

Dated: July 7, 1995

Columbia, South Carolina